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## Podcast as Assessment: Entanglement and Affect in the Law School

### Introduction

The majority of assessed work produced by law students in the UK is oriented towards a specific genre of writing. Generally speaking, it should meet basic conventions of reasoned, non-emotive language, the careful use of authority and argument, clear structure and the predominance of 'analysis' over 'description'. These forms of genre convention are taught as 'essay writing skills' and reproduced in oral and written feedback. There is a great deal of diversity in academic expectation and the guidance given about what makes good work within this genre, but aside from a very small few modules the vast majority of work required of an undergraduate student involves re-performance of the genre of academic essay. This is important, because the genre of assessment and the techniques that we deploy to improve performance produce particular types of subjectivity.<sup>1</sup> Irrespective of how critical and creative a module might be, if the assessment requires the student to fit this knowledge back into the conventional genres, the student's thinking is being disciplined. Establishing proficiency in a discipline of thought is a key part of a modern undergraduate degree, however, it is also important that students understand the confines of a discipline. Traditionally this comes from interdisciplinary teaching, but it can also be encouraged through different genres of assessment.

This article documents the 'Orders in Decay' project, in which students taking the *Law and Disorder* module at the University of \*\*\*\*\* were required to produce a 'podcast' as a part of their assessment. Podcasts are recorded sound, layering spoken word with music and other sounds to create a complex world-forming soundscape. The students were trained to a high level of proficiency, producing complex and nuanced analyses that were aimed at a public audience. The best of their work will be released publicly on iTunes and other podcasting platforms as a part of the series 'Orders in Decay'. This project aims to supplement the conventional genre of academic assessment and challenge the subjectivities that it produces. It does this by shifting the relationships (or entanglements) involved in the production of student work. Assessments tend to imagine a narrow variety of pedagogic relationships, ordinarily built around the teacher-student/researcher-examiner. The podcast stages a different set of relations. In order to change the stakes of assessment, it uses an interviewee-producer-audience relation. This article will draw out the significance of this dynamic.

In the broader pedagogic literature, podcasting is not uncommon as a way to deliver lecture material.<sup>2</sup> It is more unusual to ask students to produce a podcast as a part of their assessment.<sup>3</sup> Within this, we might delineate two different approaches to podcasting as

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<sup>1</sup> Foucault, M *Discipline and Punish* (Vintage Books, 1995). See also Kirwan, E, *Pisa, Politics, Power*, (2012) <https://cora.ucc.ie/handle/10468/2208> (viewed on 25/10/18)

<sup>2</sup> Watkins, D, 'Podcasting: A Lawyer's Tale,' 44.2 *The Law Teacher* (2010), 169. Beck, R, L, 'Teaching International Law as a Partially Online Course: The Hybrid/Blended Approach to Pedagogy,' *International Studies Perspectives* (2010) 11, 273–290. Cartney, P, 'Podcasting in an Age of Austerity: A Way of Both Enhancing Student Learning and Reducing Staffing Costs? *British Journal of Social Work* (2013) 43, 446–466. Polding, L, 'Delivering Blended Legal Learning by Open Source Methods', *Journal of Information, Law and Technology* (2007).

<sup>3</sup> Hopkins, E, 'The potential value of student created podcasts as assessment tools in higher education', *Educational Futures*, 5.1 (2012) 43; Nie, M, Cashmore, A and Cane, C 'The Educational Value of Student-Generated Podcasts' *ALT-C 2008 Research Proceedings*, 15

assessment: On one side we have attempts that produce genuinely curated digital materials,<sup>4</sup> and on the other are those projects that are essentially recorded presentations or group work. This latter form can be very useful for managing presentation related anxiety<sup>5</sup> or assuaging concerns of external examiners but its pedagogic value is ultimately very similar to an oral presentation. To require students to produce a fully curated sound experience (especially for a public listenership), is a qualitatively different task. The benefits of such a task flow from engaging the student in the knowledge-production, engaging students in an ‘affective encounter’ with an expert academic interviewee, engaging their affective power as writers/producers, and shifting their perspective of the audience of their work. This article is divided in two, with the first part describing the project, situating it in the *Law and Disorder* module, and identifying some of the key challenges of teaching students to podcast. In the second part, it sets out the theoretical positions behind such an exercise. In particular, the article draws on the fields of legal and digital storytelling to underline the manner in which the podcast can begin to break down conventional genres of assessment. It proposes a model of affective communication – an entanglement – between students, interviewee, and audience.

### **The Project: ‘Orders in Decay’**

The podcast project was based in the *Law and Disorder* module, which I teach at \*\*\*\*\* University. This was already quite an unusual module in both form and substance. ‘Law and Disorder’ describes no established legal sub-discipline, and so the module sets about constructing a new field of study:

The aim of the module is to think about what happens when the everydayness of law’s order is shaken, when habitual obedience to law is interrupted. The module focuses upon the question of disorder by cutting across the traditional legal sub-disciplines, combining aspects of domestic criminal, constitutional, human rights, international and transnational hard and soft law.

At the same time as playing with the sub-disciplines of law, since it was launched in 2014, the module seeks to develop a different skill-set to conventional legal modules:

The module is designed to prepare students for careers in the global human rights, humanitarianism and transitional justice industries, as well as domestic legal organizations that deal with policing, social exclusion and inequality. In these fields a familiarity with how to affect people, rendering difficult and complex ideas in a way to is understandable and convincing, is essential.

In this sense, the podcast assessment aligned with both of the key aims of the module.

The module was designed to run across ten weeks with a two hour lecture and a one hour seminar each week. The two hour lecture/workshop focused on the substantive subjects: riot, protest, policing, exceptionality, transitional justice. The seminars worked on the production of the podcasts. This included careful attention to choosing a good topic; research ethics; how to affect an audience; the first three minutes (the ‘hook’); and how to create a convincing

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<sup>4</sup> Moryl, R.L. (2016) ‘Pod learning: Student groups create podcasts to achieve economics learning goals’ *The Journal of Economic Education* Vol 47 No1 64-70

<sup>5</sup> Nie, Cashmore and Cane *supra* no. 3

soundscape. The project received support from the \*\*\*\*\* Institute of Advanced Teaching and Learning (a pedagogic intervention grant (2015-16) and a fellowship (2017-18)). This funded Lisa Heledd-Jones and Iain Peebles of Storyworks UK to teach two training sessions which ran parallel to the lectures and seminars. In 2017-18, the class was divided into four groups and each group received a three-hour training session in weeks 2 and 4. The first training session covered alternative forms of story-telling and interview techniques. The second focused on the skills necessary to edit the interview materials.

The podcast assessment was piloted in 2015-16 with seven students and in 2017-18 it was taken by all thirty one students on the module. The students were asked to produce a podcast of approximately 20 minutes on a subject relating to the concepts discussed. They were entitled to choose any subject they wished within a broad understanding of the topics covered. The students were encouraged to experiment with the genres and styles of podcast in order to best affect that audience, but I suggested that an interview with at least one expert in the field would be an important part of their research or preparation of material. The podcast was worth 50% of the student's grade, with the other 50% coming from a reflective diary. The diary was to show the students' continued engagement with the topics covered, and had to include at least one reflection on the production process as a whole. We set the expectation at a high level for students, because the work was potentially to be published. The assessment criteria included:

- Identify important, interesting and distinctive research questions
- Strike a compelling balance between analytic and descriptive content
- Demonstrate evidence of high quality research, including the selection and explanation of sources and the use of interview material
- Fashion a compelling argument, idea or story
- Create a well developed and engaging presentation, involving: A well rehearsed presentation; well chosen material; compelling telling of the material, vivid and accurate narrativisation; and compelling use of sound to evoke rich affective response

Students were expected to produce a podcast with overlaying narratives and a complex soundscape. However, with a few exceptions, students generally came to the module without any relevant digital experience. Thus, it was important to provide significant extra support to help them to develop the requisite skills. Despite the lack of experience, students displayed a very high level of acuity, and swiftly developed high levels of digital and affective literacy.

Perhaps the greatest difficulty with a deployment of this type of assessment is a basic lack of familiarity with the hardware and software necessary to produce a podcast. In *Law and Disorder* students used lapel microphones with their phones to record high quality audio when interviewing experts in person and to record their analysis and narration. Skype interviews were recorded using free software: 'QuickTime' (Mac) and 'MP3 Skype Recorder' (PC). It would be feasible to use the microphones on most modern smart phones to record the narration, as most of the interviews were undertaken via skype. However, the law school invested in 20 Rhode lapel-mics which improved the audio quality of both the in-person interviews and the narration. The skills necessary to edit the material were more difficult to build. We used 'Audacity' – an open-source cross-platform audio editing suite. While the basics of this software are not difficult to learn, it does take some amount of support to master. Thus, lecturers interested in running this type of assessment should seek out basic training on this platform. As an open-source

programme, Audacity does have a number of random bugs. The biggest repeated problem was the corruption of files. Thus, it was essential for students to save their projects in multiple files, rather than simply saving the same file over and again. If they saved into the same file and that file subsequently became corrupted, all of the student's work would be lost and it would be necessary for the student to begin again.

Students began work on the podcast from the beginning of the module. They selected topics in the first three weeks of the term, and then we began to work on the ethics process together. \*\*\*\*\* Law School requires a full ethics application for all undergraduate research projects. This is the case even when the student is interviewing an academic expert about their field of expertise and where the project is primarily pedagogic. This added additional time pressure to the process, particularly once it became clear that the UCU strike would significantly disrupt the module in the spring of 2018. To smooth the ethics process, the decision was taken to only allow interviews with academic experts who would have already considered the ethics of their research. Working with our ethics officer this limitation may be lifted in coming years. While the ethics process adds additional pressures which have proved difficult to manage, there remain significant benefits to covering research ethics in the module. This subject rarely finds a place in the undergraduate law curriculum (aside from as 'good academic practice'), and at times students seemed surprised at some of the issues it raised. With support, students completed a consent form and information sheet for their interviewees, an indicative list of interview questions and a full ethics application. Because each student was undertaking similar activities (interviewing academics about their research, with similar selection criteria, on campus or via Skype, and all subject to the same consent, copyright and licensing considerations) a good deal of the ethics application could be discussed and shared in class by the module convenor. This was all completed by week 5, and submitted to the School ethics officer.

Once ethics was in place, students were asked to approach experts to interview. This required that they have a strong sense of their project and that they should have undertaken enough research to be able to identify leading figures in the field. While there was a great deal of good will towards the project, because the second run of the assessment fell in the middle of the 2018 UCU pensions strike, a number of students struggled to find academics to interview. Once the interviews had been completed, the students began to construct their podcast. Lisa Helled-Jones and I offered to provide feedback on storyboards. Students then began to script and structure their podcast, editing the material together to form a basic draft. They then began to add music and effects to form a rudimentary soundscape. Students were instructed to use the Free Music Archive to create an affective soundscape. This archive provides music through Creative Commons licences. Students could use music with a 'Non-Commercial', 'Share Alike', or 'Attribution' licence. The only music that could not be used without the express consent of the musician was 'No Derivatives' or 'FMA Limited' licences. In class we discussed these limitations, and the type of licence that they needed to secure. Some students decided to go beyond this basic material to get further material for their podcasts. One sought to use an extensive archive of material from a Kenyan national broadcaster on post-election violence; another student managed to secure copyrighted material of a riot from Vice News. In both instances, students went above and beyond what might ordinarily be expected to find distinctive and interesting material that helped them tell their stories.

It is worth noting the specific aims of the podcast as assessment: we might pick out three key elements, of which a full theorisation will be developed in the next section. Firstly, the great

body of writing produced by students is overwhelmingly ‘private’. It is only read by the student and their examiners. By encouraging students to produce work that might affect a broader audience, the aim is to change how students think about their literary and academic production. This is not simply an argument for publication, an argument that could be used to support any one of the many student journals. The podcast foregrounds the question of who to *affect* an audience, who to transport them to a world created by the students. The podcast must try to interest, depress or excite an audience in a way that makes them listen to the students’ work. Thus the second aim is to sensitise students to the affective element of their academic production. In all forms of assessment, students must convince their examiner that they understand the contours of the work they are being assessed on. This is traditionally done through argumentation and authority, combined in a way that convinces the examiner that they have mastered the genre of academic or practitioner writing. What is sometimes missed in this is the tone of their texts, the affective key in which they write or present. The podcast brings this to the fore, in a way that will be essential for some students after they graduate. Finally, the assessment aims to help students develop what are rather mundanely referred to as ‘interview skills’. The project hopes to go much further than this, to create a space where students are infected with the excitement and enthusiasm that many academics feel for their chosen area of study. The interview is therefore a way to entangle the student-as-producer with the subject matter and their academic expert. This entanglement is then staged in the podcast for the audience.

### **Breaking Form, Breaking Genre**

I want to suggest that the most interesting aspect of this project is not the myriad of technical issues involved in teaching how to podcast, but the broader pedagogic possibilities presented by the podcast form. Unlike radio programs which are designed to be broadcast on low quality speakers without the loss of efficacy or attachment, podcasts seek to create an intimate relation between the listener and producer. They are designed to be listened to on earphones (originally from an iPod – hence the name podcast). However, this intimacy of broadcasting directly into a listener’s ears allows the producer to create a much more intense soundscape. This can transport the listener into a different world, creating a sense of space and time and encouraging particular affective responses. In class we listened to a number of different podcasts (The Heart Radio, The Inquiry, Radiolab, The Memory Palace, Serial, etc.), in order to identify different narrative styles, different shifts in narrative, pacing, tone, narration, use of experts, and different ways of constructing a ‘hook’. Most importantly, we wanted to experience the different worlds that each podcast tried to create. We paid particular attention to the images and feelings that the producers sought to evoke. It was important that students began to think about the tone and subtext of their communication, as well as the ideas.

#### *Digital (Legal) Story-Telling*

There are two key theoretical starting points for the *Orders in Decay* project: Legal and Digital Storytelling. The project originates from ‘Law and Literature’<sup>6</sup> and the ‘Applied Legal

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<sup>6</sup> Aristodemou, M, *Law and Literature*, (OUP, 2000); Gearey, A, *Law and Aesthetics* (Hart, 2001)

Storytelling’ movement.<sup>7</sup> These challenge the positioning of ‘narrative reasoning’ as ‘being distinct from and subordinate to other forms of reasoning deemed more logical and more “legitimate”’ to legal thinking.<sup>8</sup> In very different ways, Law and Literature and Applied Legal Storytelling underline that law is a form of literature; that it deploys semiotic, symbolic and imaginary techniques; that law relies on genre conventions to establish legitimacy; and that it tells (contingent) stories about society, law and the participants in order to come to its (apparently reasoned) conclusions. Law is a sort of storytelling, it is a description of events, with characters, personalities, ideas and structures. But all too often this storytelling gets relegated to the background. The podcast pushes the question of narrative into the foreground. To work as an affective communication, it needs to tell a compelling narrative, to create a world for its audience, to establish a rapport or series of identifications. In this sense, we move beyond the simple idea of storytelling as a description of events. Instead a rich sense of narrative emerges, one which binds together reflection on rules, principles and theories with experiences, environments, atmospheres and events. This is not superfluous ornamentation to law, but a focus on the way in which law is made present as narrative.

British law schools often train students to dread that word: ‘description’. From the earliest days of their degree they are told that ‘description’ is bad and ‘analysis’ is good. I am as guilty as the next person of using this shorthand. By it, I mean that I want to see ideas developed, demonstrating nuance by way of close analysis, comparison, contrast and context. Description comes to mean that students have not gone beneath the ‘surface’ of a problem, that their ideas lack ‘depth’ or ‘incision’. But in the name of encouraging this ‘deeper’ thought, students develop an almost pathological fear of describing anything at length. The flaw of this surface/depth metaphor is that description of the complexity and nuance of events or actions is crucial to helping a broader audience understand and engage with the material. To begin to address this distrust, in class we spent time thinking about what makes a ‘rich’ description of events. A rich description is so much more than an account of events. It is an attempt to transport the audience, to help them see themselves there, a description that gives them a strong sense of the environment, the actors, time and mood. The aim is to stage a series of legal relations for the audience in a way that makes the law come alive. In this way, ‘Law’ is made vibrant in a very different way to that imagined in the genre of undergraduate essays. Thus the deep logic of this assessment is to encourage students to narrate law differently, to think about what is narrated as law. For some students this insight will carry across into different modules and different areas of their careers after University. But even if that realisation never dawns, the podcast aims to bed-in the skills that carry over without conscious intention.

The second theoretical framework is ‘Digital Storytelling’. This is a pedagogic movement that teaches people to tell personal stories, recording them over still images to create ‘a short movie about something that mattered to’ them.<sup>9</sup> The movement began in California in the nineties as a community pedagogic practice. It aimed to democratise emergent digital

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<sup>7</sup> Rideout, C, ‘Applied Legal Storytelling: A Bibliography’ 12 *Legal Communication & Rhetoric: JALWD* 247 (2015), Paskey, S ‘Law is Made of Stories: Erasing the False Dichotomy between Stories and Legal Rules,’ 11 *Legal Communication & Rhetoric: JALWD* (2014), 51, Edwards, L, ‘Speaking of Stories and Law’, 13 *Legal Communication & Rhetoric: JALWD* (2016), 157.

<sup>8</sup> Paskey *supra* no. 7, 52

<sup>9</sup> Jamissen, G, Hardy, P, Nordkvelle, Y, Pleasants, H, ‘Preface’ in *Digital Storytelling in Higher Education* (Palgrave Macmillan 2017), xiv-xv

communication technologies.<sup>10</sup> Digital storytelling insists that personal stories ‘can make a difference in people’s lives and in how people engage with each other across difference.’<sup>11</sup> While *Orders in Decay* does not religiously follow the digital storytelling model, it nonetheless draws extensively from its pedagogical thinking. Hessler and Lambert identify eight key concepts:

1. Intimacy and safety inform narrative...
2. Collaborative making is a means of communication and communion...
3. Digital Storytelling is a form of critical literacy...
4. Constraints foster creative breakthroughs...
5. Multimodal composition is a cognitive activity...
6. Choices in design aesthetics inform and are informed by literacies, culture, & ideology...
7. Listening is an ethic and a craft.
8. Every story matters.<sup>12</sup>

As with legal storytelling, the project seeks to draw on a number of the key elements of the framework, but without adopting it altogether. Perhaps the most important difference with digital storytelling, is that the podcasts are not (at least for the most part) based on personal stories. Instead, the podcasts examine events or issues that remain somewhat distant from the students. Because of this, they lack a key dynamic of traditional digital storytelling: the personal story lends a certain authenticity and veracity to the exercise. For instance in podcasts like *The Moth*, the speaker attests to the truth of their story and this act of exposure establishes the potential for a different type of connection with the listener. At the same time, the exposure of a personal story changes the storyteller, changing their relation to the experience itself.<sup>13</sup> Within the *Law and Disorder* module few of the students had intimate experiences of disorder. What’s more as module convenor, I was queasy with the suggestion that those few students who did have such experiences should share them with the class as a whole. Even if we could establish the receptive, respectful, confidential atmosphere of the ‘story circle’ that is essential to the sharing, there would be a fundamental imbalance.<sup>14</sup> Therefore, the aim was not to try to replicate digital storytelling, but instead engage its insights while trying to stage something slightly different. In this, Hessler and Lamberts concepts 2-8 took on particular significance, guiding how we frame the interview, the question of affective communication and the public address.

### *Interview as Encounter*

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<sup>10</sup> Storyworks have been at the forefront of producing and supporting digital storytelling in the UK, with major projects for the National Theatre of Wales, the National Trust, London Ambulance, and the Eden Project. <http://storyworksuk.com> (viewed on 03/08/2018)

<sup>11</sup> Gachago, D, ‘The Performativity of Digital Stories in Contexts of Systemic Inequality’, 30.3 *South African Journal of Higher Education* (2016), 296 at 297

<sup>12</sup> Hessler, B and Lambert, J, ‘Threshold Concepts in Digital Storytelling: Naming What We Know About Storywork’ in Jamissen, G, Hardy, P, Nordkvelle, Y, Pleasants, H, (eds) *Digital Storytelling in Higher Education* (Palgrave Macmillan 2017), 19, at 26-31

<sup>13</sup> Gachago *supra* no. 11.

<sup>14</sup> Jamissen, Hardy, Nordkvelle and Pleasants *supra* no. 9, xv. Irrespective of how well we might create a story circle, there would inevitably be a tension. Ultimately whatever the students produce following the story circle was going to be assessed on an academic level. This potentially undermines the open nature of the circle. At the same time, if some students had experiences of disorder and others did not, it would create a fundamental imbalance and potentially create tensions.



The expert interview was a key moment in how the podcast was conceived. Students were encouraged to think about these interviews responsively. They were asked to approach the interviews from a position of knowledge and understanding, to know the literature in the field and particularly the work of the interviewee. But they were then encouraged to respond to the interview in an open way. The best interviews were genuine discussions and exchanges of ideas. Thus students were asked to be active in shaping the discussion in the interviews, while also allowing themselves to be led by the interviewee.<sup>15</sup> The interview embodied Hessler and Lambert's concept 2 (co-creation) and 7 (listening). This was essential to the challenge to the undergrad essay as genre, because it related to the way in which ideas are produced, and the relation between the student and the ideas. This model of interview challenges the idea that the cited material is someone else's property. By utilising interviews collected by the student, the 'cited' material becomes impressed with the student's own ideas and concerns. In this sense, we might think about the student's intervention more like that of an auteur. The auteur director shapes the staging of the film, rather than simply managing or directing the material provided by the script. The student is an essential figure in the interview, they are not simply passively reading the words of a published text (although they do this as well obviously), they are an active part of the interview, drawing the scholar out, challenging them to argue and think out an idea for the recording. Even if the words of the student never make it into the final podcast, the shadow of that thought is present. At the same time, the responsive ethos of the interview encourages students out of the approach where they create an essay plan and then execute it. The interview is meant to be an irruptive moment where the student's ideas and understanding shifts in a face-to-face moment.

The primary idea behind insisting on interviews was to try and stage something like the affective encounter.<sup>16</sup> This is 'a meeting with something that you did not expect and are not fully prepared to engage. Contained within this surprised state are (1) a pleasurable feeling of being charmed by the novel and as yet unprocessed encounter and (2) a more *unheimlich* (uncanny) feeling of being disrupted or torn out of one's default sensory-psychic-intellectual disposition'.<sup>17</sup> Again, the fit is not perfect, but the idea was that students would be broken out of their mode of learning in a very gentle and subtle manner. Instead of the juddering shock of the encounter, the interview should expose the students to a personification of the ideas. For the student, the interviewee would begin to embody ideas, and the affective relation of the interview might begin to imbue the ideas with a different set of tones. Quite clearly, not all interviews would be as irruptive as others, but students often reported feeling new excitement or even elation after these interviews. At these moments, the enthusiasm and interest of the interviewees operated contagiously. At other times, students felt deflated or anxious about their interviews. But these

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<sup>15</sup> This is a reconfigured version of Hessler and Lambert's concept 2 on collaborative making, and concept 7 on the ethic of listening (*supra* no. 12).

<sup>16</sup> For encounter see: Bennett, J, *The Enchantments of Everyday Life* (University of Princeton Press, 2001, Anderson, B, *Encountering Affect*, (Routledge, 2017); for its bodily function in the classrooms see: Probyn, E, 'Teaching Bodies: Affects in the Classroom' 10.4 *Body & Society* (2004): 21–43, Maughan, C and Maharg, P, *Affect and Legal Education: Emotion in Learning and Teaching the Law*, (Routledge, 2017)

<sup>17</sup> Bennett *supra* no. 16, 5.

affects too were part of the project, and the student had to find the resources to overcome difficulties as Hessler and Lambert comment.<sup>18</sup>

Daniela Gachago points to the way that the affective encounter can be extended through digital storytelling. She explains that stories entangle the storyteller and the audience. Stories are ‘made of air but leave their mark’.<sup>19</sup> They can make a difference to both the teller and the audience. In digital form, they can be

complex multi-layered orchestrations of different multimodal texts: language, images, sound and storytellers’ voices affectively and effectively connect their bodies to their digital stories. This orchestration is not an easy task: how the various modes work or do not work together can counter authorial intent and can have a strong – sometimes unintended – impact on audience response.<sup>20</sup>

The interview was a key moment where students began to breathe life into ideas by staging them in an encounter with an expert, but it was only the beginning. From these interviews, the podcast could begin to spin together a nuanced and affecting narrative on the subject. The encounter between the student-producer and the expert could begin to be ‘stretched’. The students find a set of living ideas in the encounter, but then they take this vitality and use it to infuse their podcast. This digital storytelling helps to project the affective life of the story beyond the encounter of the interview.

### *Affective Communication & Public Address*

The majority of the students’ podcasts were made up of short excerpts from the interview (or interviews) and the student’s narration of the story. However, the way that these were put together was radically different, in each instance. The difference of approach underlines three of Hessler and Lambert’s concepts of digital storytelling: narrativisation is a form of critical literacy (concept three), multimodal composition is a cognitive activity (concept five), and the manner in which choices in design aesthetics inform and are informed by literacies, culture, & ideology (concept six). The podcast is a form of critical literacy. It requires the basics of critical reasoning: the students must understand and communicate a complex situation or event in a clear manner, they must be able to cut through misrepresentations and read between different accounts and analyses. However, there is a second layer of critical literacy – they must also understand what is affecting or interesting about the event, and how their voice, their words and their structuring can entangle an audience. We discussed informality, received pronunciation and the creation of intimacy and distance in order to begin the students understanding of this dimension of communication. By putting these into practice, the production required that students go beyond an abstract discussion, they had to begin to hear their own voice (in recording) as something

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<sup>18</sup> It was important that students struggled to overcome difficulties in the recording and production process. These ‘constraints’ in Hessler and Lambert’s language were important: ‘As digital storytelling projects are often the first... experiences... for storytellers’ the constraints allow the ‘storyteller to become a more ingenious narrator’, and creatively find resources within themselves, for overcoming these constraints. Hessler and Lambert *supra* no. 12, 28.

<sup>19</sup> Gachago *supra* no. 11, 300-1, quoting Law as cited in Frank, A, W, *Letting Stories Breathe: A Socio-Narratology*. (Chicago: The University of Chicago Press, 2010) at 42 and 43.

<sup>20</sup> Gachago *supra* no. 11, 305

foreign and ‘other’. They had to see how their (othered) voice interacted with their interviewee, and how the emotions and affects evinced for a listenership might be mirrored (or in some cases distorted) by the soundscape that they were creating. ‘The interrelationship of the layers of meaning becomes itself a cognitive process that considers the minute choices moment to moment, as well as the overall feel/impact of the entire work.’<sup>21</sup>

As Hessler and Lambert underline, ‘critical self-awareness about what one is indicating about oneself through an artistic choice is itself a highly developed literacy.’<sup>22</sup> The students were encouraged to reflect on their aesthetic choices – particularly thinking about style of presentation, tonal register and genre. Thus, a chirpy cheerful tone of voice discussing Stalin’s purges, or upbeat tinkley piano music during a discussion of gender violence in a civil war, were problematic. However, beyond this, students were encouraged to experiment with aesthetic choices. I encouraged students to think about three phases (which were likely to overlap) in the 20 minutes of the podcast. The first three minutes or so are the ‘hook’, the time the producer has to convince the audience that they want to listen to this podcast. A second phase is the ‘development’ where the producer deepens the listeners understanding, providing intelligent and intelligible analysis to help explain the subject. Finally, to encourage listeners to subscribe to the series, each podcast has to provide some sort of ‘pay off’, a moment of pleasure for the listener where they realise something, or where they feel something strongly in response to the narrative. Aside from the ‘hook’ which invariably should have been at the beginning, there was no particular reason why the ‘development’ and ‘pay off’ had to come in any given order, or that there would be just one development and one pay off in each podcast. Indeed podcasts like Radiolab regularly employ multiple developments and extensions in a single episode.

The crowning element of the project is the release of a number of the students’ podcasts on iTunes and other podcasting sites. These were selected on the basis of quality of the affective communication and ideas discussed. This completes the desire to support the students to re-conceive of themselves as producers of exciting, dynamic and popular material. Throughout the module, this was one of the primary motivating factor for the students. Thus, I returned to the podcasts once the assessment had been submitted; feedback and marks distributed; the external examiner had examined the podcasts; and the exams board had confirmed the results. I began by confirming that students were still interested in releasing their podcasts, created a mailing group and gave fresh individual editorial feedback. The aim here was to strengthen the podcasts chosen for publication. This often involves stripping some of the material back, re-recording some of the narration or even some of the interviews, and tinkering with the soundscape. There were a number of challenges involved here – primarily the multiple other demands on their time that students faced, particularly when they had already left the University. The aim remains to release these podcasts in groups of two from late October, on the website \*\*\*\*\*.

## **Conclusion: The Undergraduate**

I began this article bemoaning the over-reliance on the conventional essay or problem question as an assessment strategy in legal education, but I would like to end on a more hopeful note. The article has attempted to give a different take on how we might approach assessment, by

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<sup>21</sup> Hessler and Lambert *supra* no. 12, 28

<sup>22</sup> Ibid. 29

developing and relying upon the emerging affective analysis of legal pedagogy and assessment.<sup>23</sup> The aim has been to develop a new nexus between the paradigms of legal story telling, digital story telling, and interview as encounter. The podcast as assessment aims to fashion something new, which helps students experience a different type of work. It also aims to gather a new type of audience. The project begins from the unique subject-position of the undergraduate. These students are in a period of intense study and investigation, engaging with their specialisation for the first time, developing high-level skills and understanding. But the undergraduate student is neither simply an 'academic expert' nor a 'member of the public'. Instead they are uniquely positioned between worlds. The wager of this project is that this position allows them to tell complex and affecting stories in a unique manner.

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<sup>23</sup> Maughan and Maharg *supra* no. 16.